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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-9-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.17 of 2001

State rep. By
Inspector of Police,
Villianur Circle,
Pondicherry,
through Public Prosecutor
for Pondicherry at High Court,
Madras. .. Appellant

vs

1.Nagaraj @ Maniyatti @ Mannangatti
2.Annamalai
3.Kumar @ Jayakumar
4.Somu @ Balakrishnan
5.Arjunan @ Durai @ Poolru
6.Muthu
7.Sankar
8.Sengeni
9.Podi Ilango @ Podi
10.Clamont @ Katta .. Respondents

Criminal appeal preferred under Sec.378(1) of the Code of Criminal Procedure against the judgment passed in S.C.No.16/2000 dated 4.8.2000 on the file of the Additional Sessions Judge, Pondicherry.

For Appellant : Mr.A.P.Suriyaprakash
Additional Public
Prosecutor (Pondicherry)

For Respondents : Mr.S.Ashokumar,
Senior Counsel,
for M/s.C.D.Johnson for
RR1, 3, 4 & 5 and for

Mr.P.Palaninathan for
RR2 and 7

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JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

This is an appeal by the State of Pondicherry against the judgment of acquittal made by the learned Additional Sessions Judge, Pondicherry, in S.C.No.16 of 2000 against the respondents herein.

2. The short facts necessary for the disposal of this appeal can be stated thus:

P.W.1 is a mason by profession. Prior to the occurrence, he along with the deceased, Kafoor, was selling cinema tickets at Jeeva Theatre at higher rate. A few persons belonging to Periar Nagar, demanded tickets at a lower rate, and there was a quarrel between the parties. Following the same, on the date of occurrence namely 26.1.1998 at about 11.00 A.M., when P.W.1 and one Balamani Aya were standing near the place of occurrence, A-1 and A-2 quarrelled with the deceased. At that time, A-1 took a knife from his back and stabbed the deceased on his neck. The deceased began running. A-2 took a knife from his waist and stabbed him. On receiving two stabs, the deceased fell down. The other accused except A-3, stabbed him. The occurrence was witnessed by P.Ws.1 to 5. P.Ws.1 to 3 took him to the Government Hospital, Pondicherry, where P.W.19, the Casualty Medical Officer, was on duty. He examined the deceased and found the following injuries.

"1) Stab wound of size 1 x ½ x 1 cms. Over the sternum.

2) Stab wound over the thyroid cartilage of size 1 x ½ x ½ cms.
3) Deep cut wound in the left back of size 8 x 2 x 1 cms.
4) Multiple stab wound over the left shoulder back near the scapula, of size 1 x 1 x ½ cms."

The Doctor gave an intimation Ex.P21 to the Police.

3. Then, P.W.1 went to Reddipalayam Police Station and gave a report, Ex.P1, to P.W.25, the Sub Inspector of Police, attached to the said Police Station, on the basis of which a case came to be registered in Crime No.9/98 under Sections 147, 148, 307 and 324 read with 149 of I.P.C. Printed First Information Report, Ex.P27, was despatched to Court.

4. P.W.25 took up investigation, proceeded to the scene of occurrence and made an inspection in the presence of two witnesses. Ex.P3, the observation mahazar, and Ex.P28, the rough sketch, were prepared by him. He recovered M.O.1, bloodstained earth, M.O.2, sample earth, and M.O.3, bloodstained cloth, under a cover of mahazar, Ex.P4. The scene of occurrence and the dead body were caused to be photographed through P.W.23, a photographer. M.Os.6 to 9 and 14 to 17 are the photographs, and M.Os.10 to 13 and 18 to 21 are its negatives. The injured, Kafoor, died at 1.40 P.M. P.W.20, the Medical

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Officer, sent death intimation, Ex.P22, to the Police. P.W.25 received the said intimation and handed over the case for further investigation to P.W.26, the Inspector of Police.

5. P.W.26 took up further investigation in the case and sent a report to the Sub-Divisional Magistrate, Pondicherry, for altering the case into Sections 147, 148, 302 and 342 read with 149 of I.P.C. On 27.1.1998, he conducted inquest over the dead body of Kafoor in the presence of panchayatdars and witnesses. Ex.P30 is the inquest report prepared by him. He sent the dead body to the hospital along with a requisition for conducting postmortem.

6. P.W.21, the Specialist G.H. and Head, Department of Forensic Medicine, General Hospital, Pondicherry, on receipt of the said requisition, conducted autopsy over the dead body of Kafoor and found the following injuries.

"1. Stab wound 2.5 cm x 1 cm x 3 cm present over the front of neck in the midline at the level of thyroid cartilage.
2. Incised wound obliquely placed 6 cm x 2 cm x 2 cm over the neck on left side cutting superficial veins at the level of thyroid cartilage.
3. Incised wound 3 cm x 1.5 cm x 2 cm present over chest left side.
4. Incised wound 2.5 cm x 1 x 1 cm over right side of upper abdomen.
5. Penetrating wound 5 x 3 cm entering abdominal cavity with protrusion small intestine present over lower abdomen on right side.
6. Incised wound 7 cm x 3 cm x 1 cm over back of left knee joint.
7. Incised wound 3 cm x 1 cm x 1 cm over upper 1/3rd of left leg.

8. Incised wound 5 x 1 x 1 cm over top of left shoulder.
9. Incised wound 4 x 1 x 1 cm over back of left shoulder.
10. Linear abrasion 10 cm x 0.2 cm over outer aspect of left shoulder.
11. Incised wound 5 cm x 2 cm x 1 cm over outer aspect of left upper arm.
12. Incised wound 7 cm x 2 cm x 0.5 cm over back of left elbow.
13. Incised wounds 5 x 1.5 x 2 cm and 2 x 1 x 1 cm over middle of back of chest.
14. Incised wound 4 x 2cm x 2 cm over back of chest left side.
15. Incised wound 18 x 3 x 2 cm over back of chest left side.
16. Penetrating wound 3 x 2 cm entering abdominal cavity present over back of chest left of midline.
17. Incised wound 4 cm x 1 cm x 1 cm over left gluteal region."

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The Doctor issued Ex.P23, the postmortem certificate, wherein he has

opined that the deceased would have died out of shock and haemorrhage due to multiple injuries.

7. On 30.1.1998, A-1, A-3, A-5 and A-6 were arrested. They volunteered to give confessional statements, which were recorded by the Investigating Officer. The admissible parts of those statements were marked as Exs.P33, P34, P35 and P36 respectively. Pursuant to the same, M.Os.23 to 26 were recovered under a mahazar, Ex.P33. On 3.2.1998, A-2, A-4, A-7 and A-9 were arrested when they volunteered to give confessional statements, which were recorded by him. The admissible parts were marked as Exs.P37, P38, P39 and P40 respectively, pursuant to which M.Os.27 to 31 were recovered by the Investigating Officer under a cover of mahazar, Ex.P42. Thereafter, on 10.2.1998, he arrested A-10. A-10 gave a confessional statement, the admissible part of which was marked as Ex.P44. Pursuant to the same, M.O.32, a knife, was recovered under a mahazar, Ex.P43. All the material objects were despatched to Court along with a requisition to send them for chemical analysis. Accordingly, they were subjected to chemical analysis, and reports were received by the Court. On completion of investigation, the final report was filed by the Investigating Officer against the respondents/accused.

8. The case was committed to Court of Session, which was taken up for trial after framing charges under Sections 148, 342 and 302 I.P.C. read with 149 I.P.C.

9. In order to substantiate the charges levelled against the accused, the prosecution marched 26 witnesses and relied on 46 exhibits and 32 material objects. After the witnesses on the side of the prosecution were examined, the accused were questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. They denied them as false. No defence witness was examined. After hearing the arguments advanced by either side, the learned trial Judge acquitted all the accused of all the charges. Aggrieved, the State has brought forth this appeal.

10. The Court heard the learned Additional Public Prosecutor. He made the following submissions:

The occurrence was witnessed by P.Ws.1 to 5. Though P.Ws.6 and 7 originally claimed to be eyewitnesses, it was clear from their evidence that they came afterwards. P.Ws.1 to 5 have clearly given the narration of the entire incident and have spoken to the participation of the respondents/accused, in particular A-1 and A-2, in the crime, and the respective overt acts. Immediately after the occurrence, a case came to be registered by the police, and investigation was taken up. Following the inquest, the dead body was subjected to postmortem. The postmortem certificate and the Doctor's evidence are in full corroboration of the ocular testimony. In the instant case, though the prosecution witnesses have spoken about the occurrence, the lower Court has rejected their evidence on the discrepancies which were minor-most in nature, and on the extraneous circumstances, which were not relevant for the decision of the case,

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and hence, the judgment of the lower Court has got to be set aside, and the respondents/accused have got to be dealt with in accordance with law.

11. The Court heard the learned Senior Counsel for the respondents.

12. The Court paid its anxious consideration on the submissions made and also perused the entire materials on record.

13. According to the prosecution, the occurrence has taken place on 26.1.1998 at about 11.00 A.M., when one Kafoor was attacked by the respondents/accused indiscriminately, and he succumbed to injuries. It is contended by the prosecution that the occurrence was witnessed by P.Ws.1 to 5. The first and foremost circumstance which stood against the prosecution, was the statement, containing in Ex.P21, recorded by P.W.19, the Doctor. From the evidence of P.W.19, the Doctor, it would be clear that it was one Arul (who was examined as P.W.3), who brought him to the hospital at about 12.15 P.M. on 26.1.1998. In the said statement, it has been recorded that the deceased was attacked by unknown persons. If to be so, at that time the persons who were involved in the crime, were not known. According to P.W.1 and other witnesses, who according to the prosecution, are eyewitnesses, they knew the accused earlier. It remains to be stated that P.W.1 in his evidence has admitted that he did not know A-3 to A-10; but, all their names have been clearly narrated in Ex.P1, the report, which has come into existence shortly. If to be so, it can be stated that their names have been introduced, and there were subsequent developments.

14. In the instant case, delay is also noticed in F.I.R. reaching the Court. According to the prosecution, the case came to be registered on 26.1.1998 at 12.30 P.M.; but, the F.I.R. has reached the Court on 27.1.1998. Thus, a long delay is noticed. In a case of murder like this, where the Court is also situated nearby, the prosecution had no explanation, much less convincing explanation to offer why such an inordinate delay was caused. Taking into consideration the evidence of P.W.1 that he did not know A-3 to A-10; but, their names have been mentioned in Ex.P1, the report, it is highly doubtful whether the F.I.R. has come into existence at about 12.30 P.M. on 26.1.1998, as claimed by the prosecution.

15. So far as P.W.1 is concerned, he claims to be an eyewitness. It is seen from the report, Ex.P1, that the occurrence took place only in one place; but, P.W.1 in his evidence has stated that the occurrence has taken place in two places. According to P.W.2, he saw only five accused and did not see others. It is the evidence of P.W.3 that A-3 was not present at the place of occurrence. According to other witnesses also, A-3 was not present at that time, and 8 or 9 persons were involved. P.W.1 has categorically admitted in his evidence that P.Ws.2 and 3 came to the scene of occurrence after hearing the shouting. All put together will clearly show that not only their evidence is discrepant, but also it is highly doubtful whether these witnesses could have been present at the time of

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occurrence.

16. Taking into consideration the inordinate delay in F.I.R. reaching the Court, it can be stated that either Ex.P1, the report, could not have come into existence, or the case in the said crime number could not have been registered at 12.30 P.M. as claimed by the prosecution. In the instant case, the earliest document, which was recorded by P.W.19, the Doctor, as stated above, was to the effect that unknown persons have attacked Kafoor and that too, the said statement was given by P.W.3, who claims to be an eyewitness to the occurrence. Thus, the evidence would clearly reveal that the witnesses came to know later about the registration of the case, after the said Kafoor died, and now, it has been brought by way of a development before the Court on the basis of which they have given evidence. Under the circumstances, the trial Judge has correctly marshaled the evidence, considered it in the proper perception and found the case of the prosecution not worthwhile of acceptance and hence, passed a judgment of acquittal, which in the opinion of this Court, has got to be sustained. Accordingly, the judgment of the lower Court is confirmed.

17. In the result, the appeal filed by the State, fails, and the same is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To;

1)The Additional Sessions Judge, Pondicherry.
2)The Additional Sessions Judge, Pondicherry,
The Principal Sessions Judge, Pondicherry.
3)The District Collector, Pondicherry.
4)The Inspector General of Police, Pondicherry.
5)The Public Prosecutor, Pondicherry.
6)The Inspector of Police, Villianur Circle, Pondicherry.

+1cc to the Senior Govt. Pleader cum Senior PP for Pondicherry Sr 39447

+1cc to Mr.C.D.Johnson, Advocate Sr 39658

Nsv/
JRG (CO)
km/3.10.

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